

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION**

**MIKE FORADORI, as Guardian for the  
Person and Estate of MICHAEL FORADORI, JR.,  
A Minor, and LANE FURNITURE INDUSTRIES, INC.**

**PLAINTIFFS**

**VS.**

**CIVIL ACTION NO. 1:03CV669-MD**

**CAPTAIN D'S, LLC**

**DEFENDANT/  
THIRD PARTY PLAINTIFF**

**VS.**

**CASTLES & ASSOCIATES, P.A.,  
JIM WALTER HOMES, INC., JOHN DOES 1-10,  
and XYZ CORPORATIONS 1-10**

**THIRD PARTY DEFENDANTS**

**RESPONSE IN OPPOSITION  
TO CAPTAIN D'S MOTION FOR REMEDIES**

COMES NOW Defendant, Jim Walter Homes, Inc. ("Jim Walter"), by and through counsel, in the above styled and numbered cause of action, and files this its Response in Opposition to Captain D's Motion for Remedies, and in support thereof, would show unto the Court as follows:

1.

The Plaintiff, Michael Foradori, was injured when a Captain D's employee pushed him over a retaining wall located on Jim Walter's property. Foradori initially sued Captain D's for his injuries. After defending the case for several years, Captain D's filed Third-Party Complaints against several other individuals and companies, including Jim Walter.

2.

The case has proceeded through discovery and trial is currently set for October 3, 2005. Currently before the Court is Captain D's Motion for Remedies. The Motion for

Remedies arises from a discovery dispute primarily related to two issues in this case: 1) whether Michael Foradori was standing on Captain D's property at the time he was pushed; and 2) whether or not Jim Walter had in place polices to ensure that its premises were safe at the time Michael Foradori was injured.

3.

Captain D's Motion is completely without merit and should be denied in all respects.

4.

In Support of this Motion, Jim Walter relies on its Memorandum in Support of its Response, which is being contemporaneously filed with the present Response in Opposition to Captain D's Motion for Remedies.

5.

Jim Walter further relies on the following exhibits:

- A. Deposition excerpts of Michael Foradori
- B. Deposition excerpts of Al Cannon
- C. Deposition excerpts of J. Nigel Ellis
- D. Second Amended Notice of 30 (b) (6) Deposition
- E. Response and Objection to Second Amended Notice of 30 (b) (6) Deposition
- F. Third Amended Notice of 30 (b) (6) Deposition.
- G. Deposition excerpts of 30 (b) (6) designee Billy Philbreck
- H. Affidavit of Tacey Clark Clayton
- I. Deposition excerpts of 30 (b) (6) designee Terry Poulsen.

J. Deposition excerpts of 30 (b) (6) designee Phillip Purcell (Volume I)

K. Deposition excerpts of 30 (b) (6) designee Phillip Purcell (Volume II)

6.

**WHEREFORE, PREMISES CONSIDERED**, Jim Walter respectfully requests that the Motion for Remedies be denied in all respects, that counsel for Captain D's be sanctioned, and that Jim Walter's be awarded attorney's fees related to the filing of this Response.

RESPECTFULLY SUBMITTED, this the 1st day of August, 2005.

BY: s/ Tacey Clark Clayton  
TACEY CLARK CLAYTON (MSB #8472)  
Attorney for Defendant/Cross-Defendant  
Jim Walter Homes, Inc.

OF COUNSEL:  
CLAYTON O'DONNELL WALSH & DAVIS, PLLC  
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**CERTIFICATE OF SERVICE**

I, Tacey Clark Clayton, one of the attorneys for Third Party Defendant Jim Walter Homes, Inc., do hereby certify that I have this day served a true and correct copy of the above and to the following counsel via electronic filing only:

R. Bradley Best	<a href="mailto:bradbest@holcombdunbar.com">bradbest@holcombdunbar.com</a>
Robert H. Burress , III	<a href="mailto:bburress@langstonlaw.com">bburress@langstonlaw.com</a>
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I hereby further certify that I have served same via United States mail to non-ECF participants:

J. Mark Shelton, Esq.  
Jana Dawson, Esq.  
P.O. Box 228  
Tupelo, Mississippi 38802

This the 1st day of August, 2005.

s/Tacey Clark Clayton  
TACEY CLARK CLAYTON